

REMARKS

In the Office Action mailed February 13, 2009, the Examiner rejected claims 78-91 on the ground of statutory double patenting as being unpatentable over claims 1-14 of copending Application No. 11/229,098 (hereafter the "098 Application"). By this Amendment, Applicant cancels claims 78-91 without prejudice or disclaimer and adds new claims 92-97. Claims 1-77 were previously cancelled. Thus, claims 92-97 are pending. No new matter has been added by this Reply.

In view of the claim amendments, Applicant submits that the double patenting rejection of claims 78-91 is now moot. Applicant further submits that new claim 92 is not co-extensive in scope with any of the claims of the '098 Application. Specifically, claim 92 recites, for example:

A method of automated sample processing comprising the steps of:
 inputting a plurality of desired sample process operations into a sample processing system, the sample processing system being configured to automatically process a first at least one sample, the process operations comprising one or more processing events;
 creating an initial schedule of the one or more processing events for the sample processing system;
 processing the first at least one sample according to the initial schedule;
 during processing of the first at least one sample according to the initial schedule, receiving a second at least one sample into the sample processing system; and
 adaptively rescheduling the processing events of the initial schedule to create an altered schedule of the one or more processing events

In contrast, claim 1 of the '098 Application, recites:

A method comprising steps for adaptively scheduling robot tasks in a time interval for a robot coupled to a stainer, wherein the robot treats slides coupled to the stainer

according to a treatment protocol with reagents in reagent bottles or fluid containers coupled to the stainer, the steps comprising:

- creating a robot task list comprising all robot tasks that are ready for execution within the time interval;
- calculating a robot task priority for each robot task in the robot task list;
- sorting the robot task list in descending order of robot task priority; and
- adding robot tasks starting from the top of the sorted robot task list to a robot task execution queue until the robot is fully utilized in the time interval or the robot task list is exhausted.

Accordingly, Applicant submits that the independent claim 92 is not coextensive in scope with independent claim 1 of the '098 Application. Claim 92 of the present application is therefore allowable. Claims 93-97 are allowable at least by virtue of their dependence from claim 92 and due to their additional recitations of patentable subject matter. Accordingly, Applicant respectfully requests withdrawal of the rejection.

In view of the foregoing, Applicant submits that this claimed invention, as amended, is allowable. Applicant therefore requests the Examiner's reconsideration and reexamination of the application, and the timely allowance of the pending claims.

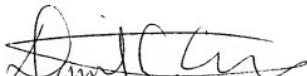
If there is any fee due in connection with the filing of this Amendment, please charge the fee to Deposit Account No. 06-0916.

Respectfully submitted,

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By:



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